



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0816; FRL- 9924-37-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Consumer and Commercial Products, and Mobile Equipment Repair and
Refinishing Operations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to Virginia's regulation for consumer and commercial products in order to apply provisions pertaining to portable fuel containers, consumer and commercial products, architectural and industrial maintenance coatings, adhesives, adhesive primers, sealants, and sealant primers to the Richmond volatile organic compound (VOC) Emissions Control Area. The revision also consists of amendments to Virginia's regulation for existing stationary sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days from date of publication]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-

0816 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: powers.marilyn@epa.gov
- C. Mail: EPA-R03-OAR-2014-0816, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0816. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814-3409 or by e-mail at jones.leslie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2012 (77 FR 3928), EPA issued a final rulemaking notice (FRN) approving a new chapter, 9VAC5 Chapter 45 - Consumer and Commercial Products, for inclusion in the Virginia SIP in order to control VOC emissions from various consumer and commercial products

within the Northern Virginia and Fredericksburg VOC Emissions Control Areas¹. On April 10, 2014, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to the Virginia SIP. The SIP revision consists of amendments to 9VAC5 Chapter 45 in order to apply provisions pertaining to certain types of consumer and commercial products to the Richmond VOC Emissions Control Area.

On June 22, 2004 (69 FR 35253), EPA issued a direct final rulemaking approving a new article, Article 48 of 9VAC5 Chapter 40 – Existing Stationary Sources, for inclusion in the Virginia SIP which established emissions standards for mobile equipment repair and refinishing operations in the Northern Virginia VOC Emissions Control Area. This SIP revision consists of amendments to Article 48 of 9VAC5 Chapter 40 - Existing Stationary Sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area.

II. Summary of SIP Revision

The SIP revision consists of amendments to 9VAC5 Chapter 45 - Consumer and Commercial Products in order to apply provisions pertaining to portable fuel containers, consumer and commercial products, architectural and industrial maintenance coatings, adhesives, adhesive primers, sealants, and sealant primers to the Richmond VOC Emissions Control Area. This revision also amends Article 48 of 9VAC5 Chapter 40 - Existing Stationary Sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area. Also, the SIP revision includes revised compliance dates for

¹ “VOC Emissions Control Area” in Virginia is defined by 9VAC5-20-206 as certain control areas by geographic location.

Chapters 40 and 45 and retains in Chapter 45 a temporary exemption for the manufacture and distribution of single-ply roof membrane adhesives and sealants.

9VAC5 Chapter 40, Article 48 extends the emissions standards for mobile equipment repair and refinishing operations to include the Richmond VOC Emissions Control Area. A compliance date of March 1, 2014 was established for the Richmond VOC Emissions Control Area under section 9VAC5-40-7050 - Compliance schedules. In addition, Subsection C of 9VAC5-40-6970 - Applicability and designation of affected facility has moved to a new section 9VAC5-40-6975 - Exemptions which lists exemptions to Article 48.

9VAC5 Chapter 45, Article 1 - Emissions Standards for Portable Fuel Containers and Spouts Manufactured before August 1, 2010 and Article 2 - Emissions Standards for Portable Fuel Containers and Spouts Manufactured on or after August 1, 2010 were amended in order to make administrative changes for clarity, style and format. Article 2 was also amended to change the applicability and compliance schedules to include the Richmond VOC Emissions Control Area. August 1, 2010 was retained as a compliance date for the Northern Virginia and Fredericksburg VOC Emissions Control Areas and a compliance date of March 1, 2014 was added for the Richmond VOC Emissions Control Area.

9VAC5 Chapter 45, Article 3 - Emission Standards for Consumer Products Manufactured before August 1, 2010 and Article 4 - Emission Standards for Consumer Products Manufactured on or after August 1, 2010, were amended in order to make administrative changes for clarity, style and format. Article 4 was amended to apply provisions to the Richmond VOC Emissions

Control Area. The compliance date of August 1, 2010 was retained for the Northern Virginia and Fredericksburg VOC Emissions Control Areas and a compliance date of March 1, 2014 was added for the Richmond VOC Emissions Control Area.

9VAC5 Chapter 45, Article 5 - Emission Standards for Architectural and Industrial Maintenance Coatings and Article 6 - Emission Standards for Adhesives and Sealants were both amended to apply provisions to the Richmond VOC Emissions Control Area. In Article 5, the compliance date of March 1, 2014 was added for the Richmond VOC Emission Control Area. In Article 6, the compliance date of August 1, 2010 was retained for the Northern Virginia and Fredericksburg VOC Emission Control Areas and the compliance date of March 1, 2014 was added for the Richmond VOC Emissions Control Area. In Article 6, a temporary exemption for single-ply roof membrane adhesive, sealant and primer was amended for the Northern Virginia and Fredericksburg VOC Emissions Control Areas to apply the standard during the ozone seasons between August 1, 2010 and September 30, 2011 and on and after January 1, 2012. The temporary exemption was extended to the Richmond VOC Emission Control Area where the standard applies during the ozone season between March 1, 2014 and September 30, 2014 and after January 1, 2015. Administrative changes were also made in Article 6 for clarity.

III. Proposed Action

EPA is proposing to approve the April 10, 2014 Virginia SIP revision which extends provisions for the control of VOC emissions from certain types of consumer and commercial products and existing mobile equipment repair and refinishing operations to the Richmond VOC Emissions Control Area. EPA is soliciting public comments on the issues discussed in this document.

These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since

Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this proposed action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the VADEQ Regulations described in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Virginia's control of VOC emissions from commercial and consumer products and existing stationary sources, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 20, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

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